

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

TERRA PARTNERS; TERRA XXI, LTD.;	§	
ROBERT WAYNE VEIGEL;	§	
ELLA MARIE WILLIAMS VEIGAL;	§	
VEIGEL FARMS, INC.;	§	
VEIGEL CATTLE COMPANY; and	§	
VEIGEL FARM PARTNERS,	§	No. 1-16-cv-01036-WPL-KK
	§	
Plaintiffs,	§	Transferred from
	§	USDC NDTX (Amarillo)
v.	§	No. 2:15-cv-236-J
	§	
AG ACCEPTANCE CORPORATION,	§	
	§	
Defendant.	§	

**DEFENDANT’S MOTION TO STRIKE (IN PART) PLAINTIFFS’ RESPONSE TO  
DEFENDANTS’ MOTION FOR ATTORNEYS’ FEES AND COSTS**

Defendant Ag Acceptance Corporation (“Defendant” or “Ag Acceptance”) hereby moves to strike part of Plaintiffs’ Response to Defendants’ Motion for Attorney Fees and Costs (the “Response”), Dkt. #120.

On March 7, 2017, the Court granted Ag Acceptance’s Motion for Summary Judgment and ordered Ag Acceptance to submit evidence showing that the attorneys’ fees claimed as damages are “reasonable.” Order Granting Motions for Summary Judgment and For Sanctions, Dkt. #118, p. 9. As Ag Acceptance reads the Court’s opinion, the only issue remaining to be resolved was whether the attorneys’ fees claimed as damages were reasonable; therefore, Ag Acceptance submitted a brief setting out the reasonableness of the fees. *See* Dkt. #119.

In response, Plaintiffs not only challenged the reasonableness of the fees, but, for the very first time, challenged whether attorneys’ fees could be awarded as damages, even though this issue should have been raised (and would have been defeated) on summary judgment. *See* Response, p. 1-3. Ag Acceptance hereby moves to strike this portion of Plaintiffs’ Response because it is

inappropriate and outside the scope of the ordered briefing. This issue should have been raised in summary judgment briefing. The breach of contract issue has been briefed twice on summary judgment, so there is no reason that Plaintiffs could not have raised it earlier.

Alternatively, if the Court is inclined to consider Plaintiffs' new argument, Ag Acceptance requests an opportunity to respond substantively, especially because Ag Acceptance believes that Plaintiffs' arguments are inaccurate and an incorrect statement of damages law. Ag Acceptance will be able to provide briefing quickly if the Court requests it.<sup>1</sup>

WHEREFORE, Defendant Ag Acceptance Corporation moves to strike the portion of Plaintiffs' Response that is not related to the reasonableness of the fees requested as damages.

Dated: April 12, 2017

Respectfully submitted,

/s/ Barbara Whiten Balliette

Barbara Whiten Balliette (*pro hac vice*)

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<sup>1</sup> The issue of attorneys' fees as damages may be moot because the Court also found that Ag Acceptance was entitled to attorneys' fees as sanctions for Plaintiffs' Rule 11 violations.



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the District of New Mexico on April 12, 2017, using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participants:

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/s/ Barbara Whiten Balliette

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